



Ninety-Seventh Legislature - Second Session - 2002
Committee Statement
LB 1060

Hearing Date: February 13, 2002

Committee On: Revenue

Introducer(s): (Wickersham, Raikes)

Title: Change ethanol production credits and grain tax rates

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

8 Yes Senators Coordsen, Dierks, Hartnett, Janssen, Landis, Raikes,
Redfield and Wickersham

0 No

0 Present, not voting

0 Absent

Proponents:

Senator William R. Wickersham
Terry King

Representing:

Introducer
NE Chapter, Associated General Contractors

Opponents:

Paul O'Hara
Larry Mussack
Mark Schweers
Rod Gangwish
John K. Hansen
Loran Schmit

Representing:

Minnesota Corn Processors
Nebraska Farm Bureau Federation
Nebraska Corn Growers Association
Kearney Area Ag. Producers Alliance (KAAPA)
Nebraska Farmers Union
Ag Processing, Husker Ag, KAAPA Ethanol,
Sutherland Ethanol, Crossroads Coop.

Neutral:

Steve Sorum

Representing:

Nebraska Ethanol Board

Summary of purpose and/or changes:

LB 1060 would amend the Ethanol Development Act to (1) base the credit available on the prevailing prices of corn and crude oil, (2) increase the check-offs needed to fund the program from one-half cent per bushel of corn or hundredweight of grain sorghum to 1.6 cents, and (3) enact a new tax on distiller's grain and gluten feed sold by a facility receiving benefits. The tax would be \$1.25 per dry ton.

Section by Section Summary

Section 1 would amend section 66-1344 to strike the current ethanol production incentive of 18 cents per gallon, and replace it with a variable production incentive. The incentive would be 20 cents per gallon if the price of corn is \$3.50 or more *and* the price of crude oil is \$29 or less. The production credit would be 5 cents per gallon lower for each 50 cents the price of corn is lower *or* \$5 the price of crude oil is higher. The prices are calculated quarterly based on number 2 yellow corn and West Texas Intermediate crude oil. This change would be operative on the effective date of this act.

Section 2 would amend section 66-1345 to harmonize the addition of the new gluten tax as a source of funds for the Ethanol Production Incentive Cash Fund.

Section 3 would amend section 66-1345.01 to increase the excise tax, or check-off on corn and sorghum beginning August 1, 2002 through October 1, 2009. The increase would be from one-half cent per bushel of corn or hundredweight of grain sorghum to 1.6 cents.

This section would also be amended to impose a new tax of \$1.25 per dry ton of distiller's grain or gluten feed generated by an ethanol facility that has received benefits under the Ethanol Development Act. The tax is to be paid by the seller, typically the ethanol plant. The tax is to be collected beginning August 1, 2002 through July 31, 2009. Proceeds from the tax are to be deposited in the Ethanol Production Incentive Cash Fund. The provisions of the sales and use tax are to apply to the collection of this tax and the Department of Revenue is to develop forms and collect the tax and may adopt rules and regulations to carry out the collection of the tax.

Section 4 would amend section 66-1345.02 to limit the responsibility of the Department of Agriculture to collect the excise tax to the check-off.

Section 5 would repeal the original sections.

Explanation of amendments, if any:

The Committee amendment would gut and replace the bill with provisions to make four changes in funding for the Ethanol Development Act. The changes are (1) an immediate stop to new applications for benefits, (2) honoring certificates for motor fuel tax credits would be deferred if there are not sufficient funds in the Ethanol Production Incentive Cash Fund, (3) an automatic increase in the checkoff and a later imposition of an animal feed byproduct tax if the balance in the EPIC fund drops below five million and, (4) an earlier date to begin the annual report required to be submitted to the Legislature.

Section by section summary

Section 1 would amend section 66-1330 to incorporate the new section 2 into the Ethanol Development Act.

Section 2 would provide that there would be no new applications after the effective date of this act. The attachment of the emergency clause by Section 7 would mean that there would be no new applications after the signature of the Governor.

Section 3 would amend section 66-1345 to provide that beginning on the effective date of this act, fuel tax credit certificates that are awarded to the ethanol producers as the incentive under the act, shall not be honored if there are insufficient funds in the Ethanol Production Incentive Cash Fund to reimburse the Highway Trust Fund. After additional funds are deposited in the EPIC fund, the tax credit certificates are to be honored in the order presented as payment.

This section would also provide that if the unobligated balance in the EPIC fund falls below \$5 million, the corn and grain sorghum excise tax is to double to one cent per bushel of corn or hundredweight of grain sorghum beginning at the start of the next calendar quarter. If, after at least one quarter of the higher checkoff, the balance remains or again falls below \$5 million an excise tax of one dollar per dry ton of animal feed byproducts generated by an ethanol facility that has received benefits under the Ethanol Development Act would be imposed.

If the unobligated balance in the EPIC fund reaches \$15 million, the animal feed byproducts excise, the higher checkoff, and the original checkoff are to be suspended in the reverse order that they were imposed. In any event, all three of these taxes are to end no later than October 1, 2009.

Finally, this section would also change the date for the report to the Legislature about the incentive program from each December 1st beginning in 2003 to each November 1st beginning in 2002. The report would also be required to examine each facility that has applied for benefits and the likelihood of its qualifying.

Section 4 would amend section 66-1345.01 to provide for the increased corn and grain sorghum excise taxes and the animal feed byproducts excise taxes as described in the previous section. The animal feed byproduct tax is to be paid by the seller, typically the ethanol plant. Proceeds from the tax are to be deposited in the Ethanol Production Incentive Cash Fund. The provisions of the sales and use tax are to apply to the collection of this tax and the Department of Revenue is to develop forms and collect the tax. The Department also may adopt rules and regulations to carry out the collection of the tax.

Section 5 would amend section 66-1345.02 to limit the responsibility of the Department of Agriculture to collect excise taxes to the checkoffs.

Section 6 would repeal the original sections, and

Section 7 would declare an emergency.

Senator William R. Wickersham, Chairperson